

ORIGINAL

December 5, 1997

GENERAL COUNSEL
OF COPYRIGHT

DEC 10 1997

RECEIVED

BY HAND

William Roberts, Esq.
Copyright Office
Library of Congress
James Madison Memorial Building
Room LM-403
101 Independence Avenue, S.E.
Washington, D.C. 20540

Re: Noncommercial Educational Broadcasting
Compulsory License, Docket No. 96-6
CARP-NCBRA

Dear Mr. Roberts:

On behalf of Broadcast Music, Inc. ("BMI"), we write to respond to the letter of Beverly Willett dated December 3, 1997 on behalf of the American Society of Composers, Authors and Publishers ("ASCAP").

In that letter, ASCAP contends that BMI made a misstatement in its November 25, 1997 reply in further support of its motion to extend the precontroversy discovery schedule vis-à-vis ASCAP. ASCAP claims that BMI erroneously stated, that during negotiations leading up to entry of the Protective Order dated October 1, 1997 in this proceeding, "ASCAP agreed that it would not have the right to withhold documents from BMI's counsel of record and that the Protective Order contained no such provision." (BMI reply at 2.)

First, let me note that Ms. Willett's letter does not address the point of our motion. The unchallenged fact remains that ASCAP took us off the Copyright Office's schedule by serving its direct case in redacted form, and we did not get an unredacted version until October 22, thereby negating BMI's ability to get discovery from ASCAP according to the schedule previously ordered by the Copyright Office. Hence our motion to adjust the precontroversy discovery schedule.

In any event, BMI's statement was accurate. During negotiations, over the terms of the consensual October 1 Protective Order, ASCAP did agree that it would not have the right to withhold documents from BMI's counsel of record. Furthermore, nothing in the Protective Order allows ASCAP to withhold documents from BMI's counsel of record without, at a

minimum, having made a prior request to the Copyright Office or CARP for specific permission to do so. ASCAP did not make such a request prior to filing its written direct case on October 1, 1997, and, indeed, has never made such a request.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael J. Hefner", followed by a long horizontal line extending to the right.

cc: All Counsel of Record

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